

EXHIBIT

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From: [Wyer, Kathryn \(CIV\)](#)
To: [Francisco, Michael](#)
Cc: [Moran, John S.](#); hannonwright@gmail.com
Subject: RE: Touhy Letter
Date: Tuesday, January 2, 2024 1:12:52 PM

****EXTERNAL EMAIL; use caution with links and attachments****

Michael,

Thank you for your inquiry of December 28, 2023. I understand from your letter that you have identified certain documents in your clients' possession as qualifying as or containing official United States Government information that has not previously been authorized for use in the federal *Doe v. Mast* case, No. 3:22-cv-49, and you now wish to produce those documents in response to Requests for Production (RFPs) served by the plaintiffs in that case. By providing this response, we do not waive any objection to the use of United States Government information for purposes beyond the scope of prior *Touhy* authorizations, absent any further authorization allowing such use.

Under the circumstances you describe, I believe the most expeditious way to proceed would be for you to provide copies of both the plaintiffs' RFPs and the documents you seek to produce in response to those RFPs, for which you are seeking *Touhy* authorization. In addition, depending on whether DoD, State, or some other agency has primary equities in the documents at issue, please address your *Touhy* request for those documents to that agency and provide the information required by that agency's *Touhy* regulations. Please also explain whether any information in the documents at issue would be protected by any protective order in effect in the federal case. I note that *Touhy* authorization is required for any material falling within the scope of agencies' respective *Touhy* regulations, regardless of whether or how your clients previously came into possession of the material. To the extent there is any doubt about whether *Touhy* authorization is required for certain material, I suggest you include it in your submission, and the agencies will let you know if no authorization is required.

Please submit separate requests for each agency from which you are seeking authorization. The agencies have requested that any *Touhy* request relating to this matter be channeled through me as a matter of administrative convenience, so please email any request to me and I will then direct it to the relevant personnel at the agency to which your request is addressed.

(I am omitting Lewis from this thread because I understand your inquiry to relate to a federal district court matter rather than the state court appeal. I assume you included Hannon, although I do not believe he has appeared in the federal case and has not previously been included in correspondence relating to that case, because he may be most familiar with the documents in your clients' possession.)

Kathy Wyer
(202) 616-8475

From: Francisco, Michael <MFrancisco@mcguirewoods.com>
Sent: Thursday, December 28, 2023 8:25 PM
To: Wyer, Kathryn (CIV) <Kathryn.Wyer@usdoj.gov>; Yelin, Lewis (CIV) <Lewis.Yelin@usdoj.gov>
Cc: Moran, John S. <JMoran@mcguirewoods.com>; Hannon Wright <hannonwright@gmail.com>
Subject: [EXTERNAL] Touhy Letter

Please see attached.

Michael

Michael Francisco

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